

Senate Finance, Ways, and Means Committee

Amendment No. 3 to SB3256

**Henry
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 3256

House Bill No. 3301*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. This act is, and may be cited as, the "Essential Government Services Act of 2002".

SECTION 2.

(a) There is appropriated a sum sufficient to:

(1) Fulfill any constitutional obligation of the state to expend funds for a particular purpose;

(2) Fulfill the provisions of Article I, Section 35, relative to the rights of victims of crimes;

(3) Fulfill any debt service obligation of the state, its agencies, authorities or instrumentalities;

(4) Fulfill the terms of any contractual obligation entered into prior to July 1, 2002, if the performance of such contract is necessary to perform an essential function of state government funded pursuant to the provisions of this act; it is the legislative intent not to fund any contracts the performance of which is not necessary to perform an essential function of the state funded pursuant to the provisions of this act;

(5) Fulfill obligations of the state to conduct elections and proclaim the results of such elections;

(6) Fulfill the terms of any court order or any lawful settlement agreement or consent decree approved by the court having jurisdiction of the action in which

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the state is a party and has agreed to expend funds as a part of the court order, settlement agreement, or consent decree.

(7) Operate the state parks.

(b) There is appropriated:

(1) All institutional revenues of any kind collected by the institutions of higher education in the course of their operations for their own use;

(2) All federal funds made available to the various branches of government to the departments, agencies and entities receiving such funds; provided, however, that such federal funds shall not be expended or obligated unless such funds must be expended or obligated to perform an essential function of the state pursuant to the provisions this act;

(3) All child support payments to the department of human services;

(4) All federal funds and premiums received pursuant to title 50, chapter 7 to the department of labor and workforce development; and

(5) All funds necessary to perform the operations of the Department of Financial Institutions.

(c) Any other extraordinary payments made to the state shall be placed in a reserve in the state general fund until appropriated by the general assembly.

(d) In enacting this section, it is the intent of the general assembly to grant provisional authority to meet state obligations.

SECTION 3. There is appropriated a sum sufficient to fund the following essential functions of the state from and after July 1, 2002:

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(a) The department of correction to provide for the custody, well-being and safety of persons committed to it and the safety, health and well-being of the citizens of the state.

(b) The department of children's services to provide for the custody, well-being and safety of persons committed to it, the safety, health and well-being of the citizens of the state and to investigate allegations of child abuse and neglect and take appropriate actions to provide for the welfare of abused or neglected children.

(c) The department of finance and administration to provide :

(1) For the well-being and safety of persons receiving care in the mental retardation programs and state custody;

(2) For the operation and payment of obligations of the TennCare Program;

(3) For the operation of hospitals or nursing facilities owned or managed by the state or its agencies;

(4) For such functions as are necessary to account for state funds;

(5) For the payment of obligations accrued to state employees prior to July 1, 2002;

(6) For the payment of expenditures made pursuant to the provisions of this act;

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(7) For payment of compensation of employees necessary to implement the provisions of this act;

(8) For payment of expenses to draw down federal funds, to continue programs funded in whole or in part with federal funds, to comply with federal law or the terms of any grant and to avoid any loss of eligibility for or withholding of federal funds;

(9) For payment of expenses of securing and maintaining real and personal property owned or managed by the state;

(10) For payment of expenses for the continuation of health and life insurance for state employees, higher education employees, teachers, and covered local employees , and to such end, the state may advance payments of premiums on the behalf of such employees and teachers and be reimbursed for such payments after adoption of the general appropriations act for the fiscal year beginning July 1, 2002;

(11) For payment of law enforcement functions of the state;

(12) For payment of expenses for operation of programs to deliver child support payments;

(13) For payment of expenses of guardians provided by the state;

(14) For payment of expenses of regulatory actions to protect the health, safety and welfare of the citizens of this state;

(15) For payment of the cost of utilities necessary to maintain property owned or managed by the state;

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(16) For payment of expenses to care for animals owned or in state custody;

(17) For the continuation of existing research projects to the extent necessary to prevent unreasonable waste or destruction;

(18) For payment of expenses of the national guard, the Tennessee Emergency Management Agency and other state entities if the governor determines that their services are necessary to protect the health, safety and welfare of the citizens of this state or to respond to fires, other natural disasters or terrorist acts;

(19) For operation and maintenance of mail delivery and computer systems necessary to implement the provisions of this act.

(d) The judicial department, the attorney general and reporter, the district attorneys general, and the public defenders to the extent judges, officials and staff are necessary to maintain the constitutionally and statutorily required functions of such offices and the judicial system in order to protect the health, safety and welfare of the citizens of this state.

(e) The department of mental health and developmental disabilities to provide for the custody, well-being and safety of persons committed to it.

(f) The department of human services to the extent its commissioner deems necessary to provide family assistance services, including the families first and food stamp programs.

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(g) The department of revenue to collect and deposit taxes and fees paid to the state.

(h) The board of probation and parole to provide for the custody, well-being and safety of persons committed to it and the safety, health and well-being of the citizens of the state.

(i) The State Treasurer to process and pay the obligations of the state of Tennessee, including workers' compensation benefits, to invest and manage funds pursuant to law, to pay the lawful claims against the state incurred pursuant to the provisions of this act, to process and pay benefits to retired employees from reserves and accounts earmarked for such purposes and to fulfill constitutionally mandated functions.

(j) The Comptroller of the Treasury to pay or cause to be paid timely principal and interest on obligations of the state and any agency, authority, and instrumentality thereof including the Tennessee Housing Development Agency, and to fulfill or comply with any legal requirements relating thereto..

(k) The department of labor and workforce development to pay unemployment benefits;

(l) The Secretary of State to perform constitutionally mandated functions.

(m) The general assembly to enable it to perform its legislative responsibilities.

(n) The Tennessee Housing Development Agency to the extent its executive director deems necessary to provide rental assistance services

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through the Section 8 program and to execute the mortgage revenue bond program.

(o) Such other emergency or essential functions of the state necessary to protect the health, safety and welfare of the citizens of this state, as the governor may from time to time determine, such determination to be reported promptly to the speaker of each house of the general assembly.

SECTION 4. The provisions of Tennessee Code Annotated, Section 9-8-307, and Tennessee Code Annotated, Title 8, Chapter 42 shall be fully applicable with regard to any person who was a state employee as defined in Tennessee Code Annotated, Section 8-42-101(3), as of June 30, 2002, and continues to perform the duties of his or her job as a state employee thereafter, regardless of whether or not such employee is receiving compensation pursuant to the provisions of this act. Any person who was a state employee as of June 30, 2002 shall be construed to be a state employee for purposes of being covered by health and life insurance and workers' compensation, regardless of whether or not such employee is receiving compensation pursuant to the provisions of this act. The provisions of this section shall not apply to employees who retire effective June 30, 2002.

SECTION 5. Notwithstanding any provision of law to the contrary, any statutory duty which is required to be performed by the state or its instrumentalities is suspended unless funded pursuant to the provisions of this act. Such suspension shall remain in effect until an appropriations act to fund state government for fiscal year 2002-2003 becomes law.

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SECTION 6. (a) Except where sovereign immunity has been or shall hereafter be expressly waived by the General Assembly, all appropriations of state revenues and departmental revenues made pursuant to the provisions of this act and in prior acts to the state, its departments, agencies, boards, educational institutions, instrumentalities, and incorporated entities performing the state's governmental functions shall be state funds and shall be protected by the state's sovereign immunity from every court's judgment, decree, attachment, or other legal process; provided, however, that any statutory or other provision authorizing an agency, board, or entity to sue and be sued shall not constitute a waiver of sovereign immunity.

(b) Except where sovereign immunity has been or shall hereafter be expressly waived by the General Assembly, all appropriations of state funds and institutional revenues made in this act and prior acts to institutions of higher education shall be state funds and shall be protected by the state's sovereign immunity from any court's judgment, decree, attachment, or other legal process, provided that any statutory or other provision authorizing any entity to sue and be sued shall not constitute a waiver of sovereign immunity.

SECTION 7. The commissioner of finance and administration shall notify the state treasurer of any expenditures made pursuant to the provisions of this act and that such expenditures comply with the act's provisions.

SECTION 8. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the provisions of this act which can be given effect without the invalid

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provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9.

It is the legislative intent to fulfill the essential function and constitutional responsibility of state government to orderly close fiscal year 2001-2002. Under the provisions of Senate Bill 3135 / House Bill 3116 the commissioner of finance and administration is authorized to deny carryforwards for, and to transfer funds from, the following enumerated funds, reserve accounts or programs to the state general fund for the sole purpose of meeting the requirements of funding the operations of state government for the fiscal year ending June 30, 2002, according to the following schedule:

(1) From the department of transportation funds in the highway fund, or other funds, the sum of \$30,000,000; shall be transferred.

(2) The actual reserve balances at June 30, 2002 shall be transferred to the general fund from the Tennessee Housing Development Authority assets fund, criminal injuries compensation fund, temporary assistance for needy families (Families First) program, local parks land acquisition fund, state lands acquisition fund, agricultural resources conservation fund, department of safety driver education fund, and wetlands acquisition fund.

(3) From the other funds, reserve accounts and programs enumerated in Senate Bill 3135 / House 3116 the amount transferred to

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the general fund shall be equivalent to thirty percent (30%) of the remaining need to meet the requirements of funding the operations of state government for the fiscal year ending June 30, 2002.

SECTION 10.

To the extent that carryforwards in reserve accounts and programs are denied for certain funds enumerated in Senate Bill 3135 / House Bill 3116 and are transferred to the general fund for the purpose of meeting the requirements of funding state government operations for the fiscal year ending June 30, 2002, it is the legislative intent that such funds be restored to those reserve accounts and programs in the fiscal year ending June 30, 2003, and that transfers from the general fund be made for that purpose in proportion to the relative carryforward amounts denied and transferred to the general fund at June 30, 2002, subject to the following conditions at June 30, 2003:

(1) The commissioner of finance and administration shall present a schedule identifying restoration amounts by reserve account or program to the comptroller of the treasury for comment and shall transmit the schedule to the senate and house finance, ways and means committees, along with the comptroller's written comments;

(2) The commissioner of finance and administration determines that normal operations of each program affected will be impaired in the future if such funds are not restored at June 30, 2003;

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(3) Other requirements of general fund closing at June 30, 2003, pursuant to the 2002 and the 2003 appropriations acts and other law are satisfied;

(4) The reserve for revenue fluctuation at June 30, 2003, is established in an amount not less than \$178,000,000 or the amount specified in the 2003 general appropriations act, whichever is greater;

(5) The overappropriation recognized in the 2003 appropriations act for the fiscal years ending June 30, 2003, and June 30, 2004, is not greater than \$80,000,000 in each year;

(6) The 2003 appropriations act authorizes or directs the commissioner of finance and administration to make such transfers from the general fund to certain reserve accounts or programs at June 30, 2003;

(7) The cumulative amounts restored to each reserve account or program in future years shall not exceed the amount transferred to the general fund from each reserve account or program at June 30, 2002.

SECTION 11. The provisions of Sections 1-8 of this act shall take effect on becoming a law, the public welfare requiring it. The provisions of Sections 2-8 shall be repealed on July 6, 2002, the public welfare requiring it. The provisions of Sections 9-10 of this act shall take effect upon becoming a law, the public welfare requiring it.